

Fair Political Practices Commission

Memorandum

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh & Remy

From: Brian G. Lau, Commission Counsel
Scott Hallabrin, General Counsel

Subject: Prenotice Discussion of Proposed Regulation 18440

Date: May 24, 2007

Proposed Commission Action and Staff Recommendation: Approve publication of notice for adoption of Regulation 18440 in August.

Reason for Proposal: Section 84310 was added to the Act in 2006. This new section provides a disclosure requirement for certain campaign-related telephone calls. Specifically, Section 84310 prohibits candidates, committees, and slate mailer organizations from expending campaign funds to pay for 500 or more telephone calls that are similar in nature to support or oppose a candidate, ballot measure, or both, unless the name of the organization that authorized or paid for the calls is disclosed to the recipient of each call. Subdivision (a) of Section 84310 further requires a disclosure statement identifying the name of the candidate, committee, or slate mailer paying for the calls unless the organization or individual that authorized the calls is disclosed and has filing obligations under the Act.

While Section 84310 sets out a general rule requiring disclosures to be provided when making certain telephone calls, it provides little guidance as to the disclosure required in many simple situations.

Summary of Proposed Actions:

1) Calls paid for by a person, who does not qualify as a candidate or committee, at the behest of a candidate or committee.

Section 84310 requires a disclosure statement in telephone calls if campaign funds are expended to pay for the calls. The statute does not explicitly require a disclosure statement when a call is paid for by a person, other than a candidate or committee, at the behest of a candidate or committee.

Section 84310 applies to candidates or committees that *directly or indirectly expend campaign funds* to pay for a call. Payments for a call made by a person at the behest of a candidate or committee that qualify as a contribution to the candidate or

committee under Government Code Section 82015 may be considered campaign funds of the candidate or committee. (See Section 89511(b)).

Accordingly, staff thinks a candidate or committee indirectly expends campaign funds, within the meaning of Section 84310, when a payment for a call is made by a person at the behest of the candidate or committee if the payment would qualify as a contribution to the candidate or committee. Staff proposes language in subdivision (a) that clarifies a candidate or committee *expends* campaign funds to pay for a telephone call if (1) the candidate or committee makes a reportable expenditure for the call from its own account or if (2) a person pays for the call at the behest of the candidate or committee and the payment qualifies as a contribution to the candidate or committee.

2) Calls paid for by multiple candidates, committees, or slate mailers or authorized by multiple candidates or committees.

Not all calls are made by a single candidate, committee, or slate mailer. Section 84310 does not address which candidate, committee, or slate mailer should be identified in the required disclosure statement when a call is paid for by multiple candidates, committees, or slate mailers or authorized by multiple candidates or committees. At a minimum, Section 84310 appears to permit disclosing the name of a candidate or committee (with filing obligations) authorizing the call, as opposed to the candidate, committee, or slate mailer paying for the call.

The statute provides candidates, committees, and slate mailers discretion in determining which candidate, committee, or slate mailer will be identified in a call. Accordingly, staff recommends language in subdivision (b) specifying that a telephone call requiring a disclosure statement must disclose at least one candidate, committee, or slate mailer “paying for” the call or at least one candidate or committee “authorizing” the call. Subdivision (c) further defines “paying for” and “authorizing” a call.

3) Recordkeeping requirements.

Section 84310 expressly requires a candidate, committee, or slate mailer paying for a call that requires a disclosure statement to maintain a record of the script of the call and a recording of the call if the call is a recorded message. Staff thinks Section 84310 also permits the disclosure statement to identify candidates or committees authorizing the call as opposed to the candidates, committees, or slate mailers paying for the call. Because a record of a call may be difficult to locate if not maintained by the candidate or committee disclosed in the course of the call, staff proposes language in subdivision (d) requiring each candidate, committee, or slate mailer paying for and each candidate and committee authorizing a call that requires a disclosure statement to maintain a record of the call.